

OCT 06 2006

Attorney Docket No. P66567US0
Application No. 09/957,458**Remarks/Arguments:**

Applicant wishes to thank Primary Examiner Deborah Crouch, Ph.D., for the indication of allowable subject matter set forth in the final Action. As explained below, the presently amended claims constitute the subject matter found allowable by the examiner.

Applicant, further, wishes to thank Dr. Crouch for marking the final Office Action to acknowledge the claim to foreign priority, under §119, and receipt of the certified copy of the priority document.

Claims 18, 24, 25, 26, and 28, currently amended, and claims 20, 21, 23, and 27, previously presented, are pending.

Claims 1-17, 19, and 22 are canceled, without prejudice or disclaimer.

Entry of the foregoing amendments to the claims is appropriate after final rejection. That is, entry of the foregoing amendments would require no further search or consideration by the examiner, for the reasons detailed below.

Claim 18 is amended by incorporating the subject matter of dependent claim 19, i.e., presently amended claim 18 corresponds to claim 19 written in independent form. Claim 25, which is dependent on claim 18, is amended in order to be commensurate with the amendment made to claim 18, hereby, i.e., claim 25 is rewritten by limiting the recited "vector" to one that comprises "a tetracycline regulatable expression system." Independent "cell line" claim 28 is similarly amended, i.e., by limiting the recited "vector" to one that comprises "a tetracycline regulatable expression system."

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Claim 26 and claim 27 (which is dependent on claim 26) are amended by rewriting claim 26 as an independent claim. Claim 24 is hereby amended by deleting "protein growth factors," since it is not recited in parent claim 18. Other, minor changes to the claims are hereby effected in order to more clearly define the instant invention.

According to the final Office Action (page 3), "Claims 19, 26 and 27 would be allowable if written in independent form." As explained above, claim 19 is written in independent form—as currently amended "method" claim 18—and "supporter cell" claims 26 and 27 are rewritten independently, i.e., independent of method claim 18. Therefore, present claims 18, 26, and 27 are "allowable," according to the final Office Action.

Additionally, present claims 20, 21, 23, 24, and 25 are allowable, by virtue of being dependent on allowable claim 18. If an independent claim is patentable over the prior art, then any claim depending therefrom is, also, patentable. *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988).

Claims 18, 20-25, and 28 were finally rejected under 35 USC 102(b) as allegedly being anticipated by EP0753574A1 (Emerson). Reconsideration is requested in view of the present amendments to the claims.

The rejection as applied against claims 18 and 20-25 is rendered moot by the instant amendments to the claims. As explained above, rejected claim 18, now, corresponds to claim 19, which was found allowable by the examiner. With respect to rejected claims 20-25, claim 22 is canceled, and claims 20, 21, and 23-25 are allowable, by virtue of being dependent on allowable claim 18 (as presently amended). *Fine, supra*.

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As applied against "cell line" claim 28, the rejection is overcome by the foregoing amendment to the claim, which limits the cell line to be "obtainable by transforming a cell with a vector," which vector comprises, *i.a.*, "a tetracycline regulatable expression system."

The statement of rejection (final Office Action, page 3) implicitly acknowledges that Emerson neither teaches nor suggests a vector that comprises a tetracycline regulatable expression system and, consequently, the reference neither teaches nor suggests the presently claimed "cell line obtainable by transforming a cell with . . . [the] vector," as recited in present (amended) claim 28.

Accordingly, the "absence" from Emerson of a limitation on present (amended) claim 28 "negates anticipation" of the claim by the reference. *Kolster Speedsteel AB v. Crucible Inc.*, 230 USPQ 81, 84 (Fed. Cir. 1986). Withdrawal of the rejection at issue appears to be in order.

As mentioned above, entry of the amendment to claim 28, *i.a.*, which renders the claim allowable, is appropriate after final rejection. Entry of the claim amendment incorporates into the claim subject matter found allowable pursuant to the final Office Action, as explained above. Therefore, entry of the amendment to claim 28 would require no further search or consideration by the examiner.

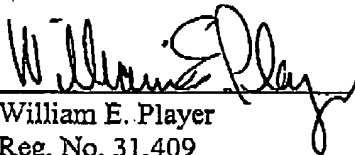
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Favorable action is requested.

Respectfully submitted,

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